

MINUTES OF THE 155TH MEETING OF THE
WATER MANAGEMENT BOARD
FLOYD MATTHEW TRAINING CENTER
523 EAST CAPITOL AVENUE
PIERRE, SOUTH DAKOTA

MAY 7, 2008

CALL TO ORDER: Chairman Jim Hutmacher called the meeting to order at 8:30 a.m. CDT. A quorum was present.

The following were present at the meeting:

Board Members: Jim Hutmacher, Rodney Freeman, Francis Brink, Leo Holzbauer, Tim Bjork and Bernita Loucks. Everett Hoyt was absent.

Department of Environment and Natural Resources (DENR): Garland Erbele, Eric Gronlund, Jim Goodman, Karen Schlaak, Ken Buhler, Tim Schaal, Lynn Beck, Mark Costello, Aaron Tieman, and Gail Jacobson, Water Rights Program; Bill Markley, Doug Miller, and Gary Haag, Ground Water Quality Program.

Attorney General's Office: Diane Best and Jeff Hallem.

Legislative Oversight Committee: Senator Tom Hansen, Huron, SD.

Others: See attached attendance sheets.

APPROVE MARCH 11-12, 2008, AND APRIL 2-3, 2008, BOARD MINUTES: Motion by Freeman, seconded by Brink, to approve the minutes from the March 11-12, 2008, and April 2-3, 2008, Water Management Board meetings. Motion carried.

JULY MEETING: The next Water Management Board meeting is July 2-3, 2008, at the Matthew Training Center, Foss Building, Pierre.

STATUS AND REVIEW OF WATER RIGHTS LITIGATION: Jeff Hallem reported that Darrell Marcus Kills in Sight who represented the interveners in the matter of Application No. 2619-2 for Tom Milligan, sent a letter to the chief engineer, Mr. Hallem, and Diane Best after receipt of the Board's final decision stating objections and requesting 45 additional days to respond. Ms. Best sent a letter to Mr. Kills in Sight on May 5, 2008, stating that the department's position is that the final decision has been reached and stating that the interveners had an opportunity to respond but did not. Mr. Hallem said he concurs with the department's position. The interveners were provided notice of the final decision and the interveners had the responsibility to file any objections at the time, but chose not to. Mr. Hallem noted that the time to appeal the board's decision has also passed.

Mr. Hallem stated that no board action was necessary.

ADMINISTER OATH TO DENR STAFF: Chairman Hutmacher administered the oath to DENR staff who intended to testify during the meeting.

DISMISSAL OF STEVE HALVORSON COMPLAINT OF IMPAIRMENT TO WATER RIGHTS BY JOHN URBAN'S CONSTRUCTION OF A DAM/DUGOUT: Diane Best distributed copies of an Order Dismissing Complaint in the matter of the Steve Halverson complaint of impairment to water rights by John Urban's construction of a dam/dugout.

Ms. Best reported that the complaint was filed by Steve Halverson concerning a water impoundment in Lyman County. The hearing was scheduled before the Water Management Board on December 5, 2007, but was delayed upon mutual agreement by the parties. Subsequently, the parties entered into a settlement agreement concerning the impoundment. The settlement agreement provides that if the terms of the agreement are complied with, the case now pending before the board may be dismissed.

Counsel for Mr. Urban and Mr. Halverson advised the department that the work contemplated in the settlement agreement has been completed and that dismissal is warranted based on the terms of the settlement agreement. Both parties authorized the chief engineer to present the request for dismissal. The chief engineer reviewed the matter and recommended dismissal.

Motion by Brink, seconded by Freeman, to approve the Order Dismissing Complaint based on the settlement agreement. Motion carried.

REQUEST FOR STATEMENT OF REASONS REGARDING THE ADOPTION OF ARSD 74:55:01:01 THROUGH 74:55:01:61, INCLUSIVE: Gary Haag, Ground Water Quality Program, reported that these rules were approved by the Interim Rules Review Committee on April 15, 2008, and the approved rules were delivered to the Secretary of State on April 21, 2008.

On May 1, 2008, the department received a request from Nancy Hilding, Prairie Hills Audubon Society, for a statement of reasons as to why the amendments to the rules were adopted by the Water Management Board.

Mr. Haag stated that the department is in the process on preparing the statement of reasons at this time and will present it to the board prior to their next meeting in July.

Mr. Haag noted that the Interim Rules Review Committee had some concerns on the section pertaining to a permit transfer. The committee felt that the requirements in permit transfer were too lenient.

Mr. Hallem stated that some of the committee members were concerned about the lack of specific statements in the rules about holding the transferee to the same financial obligations as the original licensee.

PRESENTATION ON UNDERGROUND STORAGE TANK REGULATIONS AND REQUEST TO ADVERTISE PROPOSED REVISIONS TO ADMINISTRATIVE RULES: Doug Miller, Ground Water Quality Program, gave a presentation on the underground storage tank regulations. He answered questions from the board.

Following his presentation, Mr. Miller requested permission to advertise for a hearing to consider amendments to the under ground storage tank regulations.

Motion by Freeman, seconded by Brink, to authorize the department to advertise for a public hearing to consider amendments to the under ground storage tank regulations. Motion carried.

NEW WATER PERMIT APPLICATIONS: The pertinent qualifications attached to approved water permit applications throughout the hearings are listed below:

Well Interference Qualification

The well(s) approved under this permit will be located near domestic wells and other wells which may obtain water from the same aquifer. The well owner under this Permit shall control his withdrawals so there is not a reduction of needed water supplies in adequate domestic wells or in adequate wells having prior water rights.

Well Construction Rule Qualification No. 1

The well(s) authorized by Permit No. _____ shall be constructed by a licensed well driller and construction shall comply with Water Management Board Well Construction Rules, Chapter 74:02:04 with the well casing pressure grouted (bottom to top) from the producing formation to the surface pursuant to Section 74:02:04:28.

Well Construction Rule Qualification No. 2

The well(s) authorized by Permit No. _____ shall be constructed by a licensed well driller and construction shall comply with Water Management Board Well Construction Rules, Chapter 74:02:04 with the well casing pressure grouted (bottom to top) pursuant to Section 74:02:04:28.

Irrigation Water Use Questionnaire Qualification

This permit is approved subject to the irrigation water use questionnaire being submitted each year.

Low Flow Qualification

Low flows as needed for downstream domestic use, including livestock water and prior water rights must be by-passed.

UNOPPOSED NEW WATER PERMITS ISSUED BY THE CHIEF ENGINEER WITHOUT A HEARING BEFORE THE BOARD: See attachment.

WATER PERMIT APPLICATION NO. 2623-2, COLONIAL PINE HILLS SANITARY

DISTRICT: Diane Best offered DENR Exhibit 1 - Ken Buhler's vita, DENR Exhibit - the agency file, and DENR Exhibit 3 - a well completion report for the Robby Cregut well. The exhibits were admitted into the record.

Ms. Best noted that the department received a letter in opposition of the application from Robby Cregut, Rapid City, SD.

Ms. Loucks stated that she had received a letter from Roy Brumbaugh, manager of the Highland Hills Water System, regarding the application. The other board members indicated they had not received this letter.

Ms. Best stated that the letter was not filed with the chief engineer pursuant to the advertised notice, therefore, does not meet the requirements of SDCL 46-4 for intervention in this proceeding. She noted that neither Highland Hills Water System nor Mr. Brumbaugh were present at today's hearing.

Jeff Hallem said the letter to Ms. Loucks should be included as part of the record.

Ken Buhler presented his report on the application.

Application No. 2623-2 proposes to appropriate 0.07 cfs from an existing well. Water Permit No. 2461-2 currently appropriates 0.33 cfs from a well completed into the Madison aquifer (1,052 feet deep) in Pennington County. This application proposes to increase the diversion rate authorized from the well from 0.33 cfs to 0.40 cfs, which is an additional 30 gallons per minute. The water is for use in a suburban housing development.

The SD Water Well Completion Report received for the well that will be used to supply water for this proposed appropriation identifies the top of the Madison aquifer at 630 feet below grade and a May 30, 2002, static water level of 466 feet below grade. The completion report indicates the well produced 150 gpm when developed with air.

The project specifications and contract documents submitted with this application estimated a 2007 static water level for this well at 555 feet below grade. The engineer reports a 2007 "drawdown water level" of 591 feet below grade at a pump rate of 135 gpm. The specific capacity of the well is estimated to be 3.75 gpm per foot of drawdown at 135 gpm. The engineer estimates a 2007 "drawdown water level" of 617 feet below grade at a pump rate of 160 gpm.

There are currently 161 appropriations plus one deferred application from the Madison aquifer in South Dakota. These appropriations include: seven future use permits that reserve 11,072.8 acre-feet of water per year (ac-ft/yr); 129 water permits/rights for non-irrigation purposes appropriating a total of 86.03 cfs; and 25 water permits/rights appropriating 7,700.36 ac-ft/yr for irrigation use. If it is assumed that the future use permits can be fully developed; the non-irrigation appropriations will be used at 60 percent of full time usage at their maximum diversion rate; and irrigation appropriations will use their full appropriation, the maximum amount of water that can be expected to be used with current appropriations is approximately 56,142 ac-ft/yr. If the deferred permit is approved (1,600 ac-ft/yr), the total maximum use would be approximately 57,742 ac-ft/yr.

The actual water usage from the Madison aquifer is expected to be considerably less than this "worst case" estimate. This is clear following an examination of actual water use compared with appropriations.

The additional volume of water requested by this application (50.6 ac-ft/yr) will have an insignificant impact on a water balance for the Madison aquifer. The availability of

unappropriated water from the Madison aquifer will not be impacted if this application is approved.

The Water Rights Program monitors 26 observation wells completed into the Madison aquifer in the Black Hills area. Observation well PE-86A is located about one and three-fourths miles southeast of this well site.

A hydrograph of the observation well is included in Mr. Buhler's report. The hydrograph is typical for observation wells completed into the Madison aquifer, showing the aquifer's response to climatic conditions and clearly demonstrating the system is recharged. The hydrograph documents that the potentiometric surface of the Madison aquifer fluctuates by 130 feet in this area in response to seasonal and climatic variations. The potentiometric surface rose during the 1990's in response to wet climatic conditions. The water level has decreased since 1999 in response to less recharge. Observation well data suggest that at the existing level of development, natural influences dominate the water levels of the aquifer and the effects of pumping as yet, are not obvious.

Since the Madison aquifer is under artesian conditions in this area, drawdown from pumping a well may extend over a fairly large area. Interference between nearby wells completed into the Madison aquifer may be measurable. However, the impact of the small diversion rate requested by this application is expected to be insignificant. Information provided in the project specifications and contract documents submitted for this proposed increased appropriation was used to predict a specific capacity for this well of 2.0 gpm/ft or a drawdown of approximately 87 feet at a pump rate of 180 gpm.

The additional 30 gallons per minute diversion rate proposed by this application would result in approximately 36 additional feet of drawdown at this well compared with the drawdown at the existing permitted rate (150 gallons per minute). The additional 36 feet of drawdown projected at the production well by the increased pumping of this well will result in insignificant drawdown in neighboring wells.

Mr. Buhler stated that on December 27, 2007, the Water Rights Program received a telephone call from Robby Cregut, the holder of Water Right No. 2473-2, Cregut Inc. The well that supplies Water Right No. 2473-2, the Cregut well, is located approximately 2,400 feet northwest of the existing Colonial Pine Hills Sanitary District well authorized by Water Right No. 2461-2 (CPHSD well), that is also proposed to be used to supply water to Water Permit 2632-2. The Cregut well experienced problems because of low water levels and Mr. Cregut was concerned about the effects competing users were having on the well.

When considering the Cregut complaint, the data from Water Rights' Observation Well PE-86A was extrapolated for the area. The data suggests that between August 2001 and December 2007, the potentiometric surface declined around 110 feet in this area due to natural conditions. The well completion report submitted for the Cregut well indicates that when the well was constructed in August, 2001, there was approximately 140 feet between the static water level and the total depth of the well. The natural water level fluctuations in the area would have significantly affected the storage in the Cregut well, may have dramatically impacted the "total

pumping head” requirement on the well pump, and may have even caused the water level of the well to drop below the pump.

Mr. Buhler noted that area well owners that may have to deepen wells, lower pumps or even replace wells because of a dry cycle may make the inappropriate association that increased appropriations from the aquifer is the cause of their problems. It is likely that there will be more well interference complaints and investigations until there is significant recharge to the aquifer.

SDCL 46-2A-20 requires that no water permit for construction of works to withdraw water from the Madison formation in Butte, Fall River, Custer, Lawrence, Meade and Pennington counties may be issued for a term of more than twenty years, unless the water management board determines, based upon the evidence presented at the hearing that:

(1) Sufficient information is available to determine whether any significant adverse hydrologic effects on the supply of water in the Madison formation would result if the proposed withdrawal were approved; and

(2) The information, whether provided by the applicant or by other means, show that there is a reasonable probability that issuance of the proposed permit would not have a significant adverse effect on nearby Madison formation wells and springs."

Evidence is not available to justify issuing these permits without a term limitation of 20 years.

Mr. Buhler concluded that the Madison aquifer is a viable aquifer in this area. The diversion proposed by this application will not adversely impair existing water rights. Information is not available to justify issuing these permits without a term limitation of 20 years.

The Chief Engineer recommended approval of Application No. 2623-2 for a 20 year term with the Well Interference Qualification and the following qualifications:

1. In accordance with SDCL 46-1-14 and 46-2A-20, Permit No. 2623-2 is issued for a 20-year term. Pursuant to SDCL 46-2A-21, the 20-year term may be deleted at any time during the 20-year period or following its expiration. If the 20-year term is not deleted at the end of the term, the permit may either be cancelled or amended with a new term limitation of up to twenty years. Permit No. 2623-2 may also be cancelled for nonconstruction, forfeiture, abandonment, or three permit violations pursuant to SDCL 46-1-12, 46-5-37, 46-5-37.1 and ARSD 74:02:01:37.
2. Colonial Pine Hills Sanitary District shall report to the Chief Engineer annually the amount of water withdrawn from the Madison Aquifer.

Following his presentation, Mr. Buhler answered questions from the board.

Ted Schultz, CETEC Engineering, was administered the oath by Chairman Hutmacher. Mr. Schultz testified that he is a professional engineer representing Colonial Pine Hills Sanitary District. The sanitary district has been in existence since the 1960's. In 2000, the district experienced issues with other wells and also needed to improve their supply. A facility plan was completed by CETEC and the sanitary district has received a State Revolving Fund loan. The sanitary district drilled a new well in 2002. During the past eight years, the sanitary district has spent several hundred thousand dollars on improvements. Mr. Schultz said the sanitary district

serves 420 customers consisting of about 1,000 people. This is the district's primary well. They intend to utilize the well during irrigation peaks in the summer.

Responding to questions from Ms. Best, Mr. Schultz testified that Colonial Pine Hills Sanitary District has enforced a water conservation plan for the past eight years. The customers are allowed to water from 5:00 p.m. to 10:00 p.m. every other day during the summer. The district also has an escalating water rate, so the more water that is used the higher the rate.

Ms. Best distributed a copy of the Findings of Fact, Conclusions of Law, and Final Decision in the matter of the Colonial Pine Hills Sanitary District application approved by the Board in 2001. She requested that the board take judicial notice of its 2001 decision.

Motion by Freeman, seconded by Brink, to approve Water Permit Application No. 2623-2, Colonial Pine Hills Sanitary District, subject to the qualifications set forth by the chief engineer. Motion carried.

Ms. Best stated that because the intervenor did not appear at the hearing, Findings of Fact and Conclusions of Law are waived for this matter.

WATER PERMIT APPLICATION NO. 6959-3, SCHAEFFER ACRES, INC.: Ms. Best offered DENR Exhibit 1 – James Goodman Vita, and DENR Exhibit 2 – the agency file. The exhibits were admitted into the record.

Letters of opposition were submitted by Alan Fenner and David and Jennifer Herrboldt, Menno, SD. Neither of the intervenors appeared at the hearing.

Jim Goodman presented his report on the application.

Application No. 6959-3 proposes to appropriate 2.11 cfs from three wells approximately 220 feet deep to irrigate 320 acres in Hutchinson County.

The Lower James Missouri aquifer is a buried outwash (sand and gravel) that is under predominantly water table conditions but appears it may be under artesian conditions at this site. The aquifer underlies 268 square miles and contains an estimated 2.367 million acre-feet of water in storage in Hutchinson County. The aquifer extends into Hanson County to the north, into Yankton County to the south and blends into the Choteau aquifer in the subsurface to the west. The aquifer appears to be hydraulically connected to the James River and possibly to the Niobrara Formation in the subsurface to the north and east. Ground water movement is probably from northwest to southeast toward the James River in the area of this application.

No test wells were drilled for this application. However a test well (YN-60-79) drilled by the SDGS for the Yankton County study indicates the top of the Lower James Missouri aquifer was encountered at 155 feet and extended to a depth of 285 feet. The test well is located just across the road and to the east from this application. The total thickness of the aquifer at this site should be about 130 feet. According to test drilling for the county study and other wells in the area both domestic and observation wells there is a good likelihood that the aquifer underlies this site. The mapping of the aquifer in the county study also indicates the aquifer boundary is just to the

northeast of this site. Testing will be necessary to fully evaluate the potential of this site and to determine if all three wells are needed.

The Water Rights Program monitors an observation well YA-80G located about two and one-half miles west of this site and completed into the Lower James Missouri aquifer. Water levels for this well show good response to climatic conditions that is rising water levels during wet periods and gradually declining water levels during dry years. In general, the water level record indicates that the aquifer is capable of sustaining additional withdrawals. A hydrograph for this observation well is included in Mr. Goodman's report.

The nearest existing water permits/rights are located about four miles south of this application. Interference is not expected to be a problem. At this distance between production wells drawdown will not be significant. The aquifer behaves like it is under water table conditions. The observation well record indicates that very small fluctuations due to pumping can be expected.

Mr. Goodman concluded that water is available from the Lower James Missouri aquifer. The aquifer may be under artesian conditions at this site, but the water levels behave more like the aquifer is under water table conditions. Interference is not a concern. The wells authorized by this application must be constructed in accordance with SD Well Construction Standards. The tentative well depth appears to be closer to 285 feet than the 220 feet estimate by the applicant.

The chief engineer recommended approval of Application No. 6959-3 with the Well Interference Qualification, Well Construction Rule Qualification No. 2, and the Irrigation Water Use Questionnaire Qualification.

Mr. Goodman addressed the concerns raised by the two interveners. He answered questions from the board.

Ron Schaeffer was administered the oath by Chairman Hutmacher. Mr. Schaeffer testified that he is applying for a water permit for three wells and he hopes to obtain the needed water flow from one of the wells.

Motion by Freeman, seconded by Loucks, to approve Water Permit Application No. 6959-3, Schaeffer Acres, Inc., subject to the qualifications set forth by the chief engineer. Motion carried.

CANCELLATION CONSIDERATIONS: Mr. Gronlund reported that eight water permits/rights were scheduled for cancellation. The owners were notified of the hearing and the reason for cancellation. Mr. Gronlund noted that the department received a letter on Permit No. 1657-1, Douglas Ottema. Mr. Gronlund requested the board consider cancellation of the seven other permits/rights.

No other letters were received in response to the notices of cancellation.

The following water permits/rights were recommended for cancellation for the reasons listed:

Water Permit No. 1473-1 filed by the Veterans Administration Medical Center;
abandonment/forfeiture

Water Permit No. 1960-2 filed by Marine Life Aquarium now owned by the city of Rapid City;
abandonment/forfeiture

Water Right No. 2289-2 filed by Sandhills Ranch Properties; abandonment

Water Permit No. 3659-3 filed by Wendell Bishop now owned by Pat Walsh; non-construction

Water Right No. 4942-3 filed by John R. Wilson; abandonment/forfeiture

Water Permit Nos. 5543-3 and 5543A-3 filed by Fisher Sand & Gravel and now owned by Steve
and Jennifer Roduner; abandonment/forfeiture

Motion by Freeman, seconded by Brink, to cancel the seven water permits/rights for the reasons
listed. Motion carried.

Consider Cancellation of Water Permit No. 1657-1, Douglas Ottema: Mr. Ottema participated
via telephone conference call.

Diane Best stated that she would stipulate to the board that DENR does not object to the unsworn
testimony of Mr. Ottema in this proceeding.

Ms. Best offered DENR Exhibit 1 – the agency file. The exhibit was admitted into the record.

Mr. Gronlund stated that the water permit is for a small-scale mining operation in an area in
Lawrence County commonly known as Beartown Hill. The permit was to develop a series of
small dams or dry draw structures that would be used for the mining operation. The permit was
applied for and approved in 1998 and given a timeframe of February 25, 2003, to complete all
construction and a date of February 25, 2007, to put the water to beneficial use.

During a March 4, 2008, telephone conversation with Mr. Gronlund, Mr. Ottema confirmed that
nothing had been developed. SDCL 46-2A-8 provides that any construction necessary to put the
water to beneficial use shall be completed within five years of approval of the permit and the
water shall be put to beneficial use within an additional four years.

ARSD 74:02:01:37 states that a permit is invalid if the necessary works were not constructed or
the water put to beneficial use within the time limits as provided by statute. ARSD 74:02:01:36
gives the Water Management Board the authority to cancel invalid permits.

The chief engineer recommended cancellation of Water Permit No. 1657-1 due to non-
construction.

Mr. Gronlund noted that Mr. Ottema has been informed that cancellation of this water permit
does not prohibit a new application for this project in the future.

Mr. Ottema stated that he is still actively pursuing the developing of the mining project, but he
cannot dispute that construction of the works has gone beyond the timeframe.

Motion by Freeman, seconded by Brink, to cancel Water Permit No. 1657-1, Douglas Ottema
due to non-construction. Motion carried.

Mr. Ottema and Ms. Best waived Findings of Fact and Conclusions of Law.

WATER PERMIT APPLICATION NO. 2625-2, RAYMOND YAGER: Ms. Best offered DENR Exhibit 1 – Mark Costello Vita, DENR Exhibit 2 – the agency file, DENR Exhibit 3A – a large map showing the location of the project, DENR monitoring wells, and nearby wells, DENR Exhibit 3B – a small map showing the same information as Exhibit 3A, DENR Exhibit 4 – a hydrograph for Water Rights Observation Well GY-78A.

The exhibits were admitted into the record.

Mark Costello presented his report on the application.

Application No. 2625-2 requests to appropriate 0.86 cfs of water from one well completed to the Ogallala Aquifer approximately four miles south of Burke, South Dakota to irrigate 60 acres as needed from May 1st to September 30th annually.

The Ogallala Aquifer is part of the Northern High Plains Aquifer. The High Plains Aquifer is a massive aquifer that underlies eight states from South Dakota to Texas. This aquifer is an important source of ground water for irrigation, commercial and domestic uses. The Ogallala Aquifer consists primarily of fine to medium, poorly graded sandstone with some inter-bedded clay and siltstone. The Ogallala Aquifer underlies 193,280 acres of Gregory County and contains an estimated 1.9 million acre-feet of recoverable water in storage. It is under water table conditions in the area of the requested diversion.

The Water Rights Program monitors 73 observation wells completed to the Ogallala Aquifer of which nine are located in Gregory County. Mr. Costello's report contains hydrographs of the three observation wells closest to the requested diversion. Seasonal fluctuations can be seen in all three hydrographs and water level records show a small increase over the various study periods. This trend is supported throughout portions of the north and northeast High Plains Aquifer.

There are no existing water rights within two miles of the requested diversion. The closest right is held by the City of Burke and is located just over three miles to the northwest. In 2006, there were three water rights in Gregory County that authorized water appropriations from the Ogallala Aquifer for irrigation. The total amount authorized for irrigation was 211 acre-feet and the reported amount pumped was 103.8 acre-feet.

The chief engineer recommended approval of Water Permit Application No. 2625-2 with the Well Interference Qualification, Well Construction Rule Qualification No. 2, and the Irrigation Water Use Questionnaire Qualification.

Mr. Costello noted that it is unlikely that the amount of water requested can be developed. The granting of a water permit is not a guarantee that sufficient water will be available at this location.

Mr. Costello answered questions from the board regarding water availability in this area.

Pat Cerny was administered the oath by Chairman Hutmacher. She drew the location of her wells on DENR Exhibit 3A.

Ms. Cerny said she is concerned about any future water permit applications in the area because her home was built with a water heating and cooling system so any loss in their well would mean the Cerny's would not be able to use the heating and cooling systems. Ms. Cerny noted that she is not opposed to the permit.

Raymond Yager was administered the oath by Chairman Hutmacher. He offered Applicant Exhibit A – grant proposal for research on specialty crops. The exhibit was admitted into the record.

Mr. Yager testified that about three years ago he started looking for high value crops for small farms. Mr. Yager stated that he envisions having 35 to 40 acres of producing plants and approximately a 20 to 25-acre area devoted to the development of seedlings to enable other orchards be developed around the county. Mr. Yager said he realizes that the size of his operation will be dictated by the amount of water available to him. These particular plants do not use a tremendous amount of water.

Mr. Yager stated that he and his wife tried to contact everyone who signed the petition opposing the application. All but three of the petitioners essentially had no objection to the operation.

Mr. Yager answered questions from the board regarding his proposed orchard.

Motion by Freeman, seconded by Holzbauer, to approve Water Permit Application No. 2625-2, Raymond Yager, subject to the qualifications set forth by the chief engineer. Motion carried.

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION IN THE MATTER OF WATER PERMIT NO. 6908-3, HARLAN AMAN: Counsel for the applicant submitted proposed Findings of Fact, Conclusions of Law, and Final Decision. Subsequently, counsel for DENR submitted DENR response to proposed Findings of Fact, Conclusions of Law, and Final Decision, and counsel for Interveners Allen Hieb, Delores Hien, Dale Mohr, and Raymond Groft, submitted Interveners' proposed Findings of Fact, Conclusions of Law, and Final Decision and Interveners' objections to applicants proposed Findings of Fact, Conclusions of Law, and Final Decision.

Jeff Hallem presented his rulings on the above-listed submissions.

Motion by Freeman, seconded by Brink, to accept Mr. Hallem's rulings as presented, including a changing "Applicant's" to "Interveners" on page 4, paragraph O. Motion carried.

Motion by Freeman, seconded by Brink, to adopt the Findings of Fact, Conclusions of Law, and Final Decision in the matter of Water Permit No. 6908-3, Harlan Aman. Motion carried.

WATER PERMIT APPLICATION NO. 2624-2, EDWARD HILL: Diane Best represented the Department of Environment and Natural Resources.

The applicant, Edward Hill, appeared pro se.

The following interveners appeared pro se: Michael Valandra, district representative for the Rosebud Sioux Tribe, Steven Valandra, St. Francis, Ruben McCloskey, chairman of the Sicangu Treaty Council, and Darrell Markus Kills in Sight, water rights consultant for the Treaty Council.

Ms. Best stated that Robert Wood filed a letter of opposition, but did not appear at today's hearing.

Ms. Best noted that the treaty rights organization did not separately intervene in this matter but the Rosebud Sioux Tribe did intervene. The department took the position that the Rosebud Sioux Tribe is a party to the proceeding, but the treaty rights organization is not because the time to intervene has expired.

Ms. Best called Eric Gronlund who testified regarding the procedure that is followed for a water permit application. He stated that the department received Application No. 2624-2 on January 18, 2008. The application was deemed completed and Mr. Gronlund gave the application to Jim Goodman, who assigned Mark Costello to completed the report on the application. The Rosebud Sioux Tribe has petitioned on a number of permit applications in the vicinity of this application in recent years. Because of that, the staff has voluntarily committed to providing a copy of the application and a draft report to the tribe.

Mr. Gronlund stated that on February 15, 2008, he sent a copy of the draft report to Syed Huq, the Water Resources Director for the Rosebud Sioux Tribe. Mr. Gronlund received a letter from Mr. Huq and Rodney Bordeaux, President of the Rosebud Sioux Tribe on February 27, 2008. In their letter, the tribe did not comment on anything substantive to DENR's review of the application, but they did discuss the jurisdictional issue. Based on that, DENR deemed it appropriate to move forward with the publication of notice in the newspaper. The final staff report, the chief engineer's recommendation, and a copy of the public notice was sent to the Rosebud Sioux Tribe on March 17, 2008.

Publication on the application took place on March 26 and April 2, 2008, in the Todd County Tribune. The department received petitions in opposition to the application from the Rosebud Sioux Tribe and from Robert Wood. DENR then sent a notice scheduling the hearing to the two petitioners. Included with the notice were a copy of the report, the recommendation, the petitions, the Summary of SD Water Laws and Rules document, and the Procedure for Hearings before the Water Management Board, January 2008, document.

Responding to questions from Mr. Valandra, Mr. Gronlund stated that he sent a letter and the draft report to Syed Huq on February 15, 2008. On February 27, 2008, Mr. Gronlund received a response letter signed by Mr. Huq and Mr. Bordeaux. DENR staff did not go to the reservation and meet with anyone from the Rosebud Sioux Tribe.

Ms. Best offered the following exhibits:

DENR 1 – Mark Costello's vita

DENR 2 – Agency File

DENR 3 – Hydrograph, Water Rights Observation Well TD-76F

DENR 4 – Hydrograph, Water rights Observation Well TD-90A

DENR 5 – Hydrograph, Water Rights Observation Well TD 76G

DENR 6 – Map showing location of application, Rosebud monitoring well, and three other monitoring wells

DENR 7 – Rosebud Sioux Tribe: Depth to water levels in Tribal Monitor wells 1984-2006 with an aerial photo on the back of the exhibit

DENR 8 – Summary of South Dakota Water Laws and Rules prepared by Water Rights Program, January 2008

DENR 9 – Procedure for Hearings before the Water Management Board, January 2008

The exhibits were admitted into the record.

Mark Costello presented his report on the application.

Application No. 2624-2 proposes to appropriate 1.78 cfs of water from one well to be completed near the center of the SW ¼ of Section 11 T36N, R29W, approximately 15 miles southeast of Mission, South Dakota. The well was not constructed at the time of application for this water right. The property on which this water right is being sought is deeded land that lies within the boundaries of the Rosebud Sioux Indian Reservation. Water diverted under this application will be used to irrigate approximately 136 acres of land from March 1 to October 31 of each year, as needed.

In the area of T36N, R29W, the White River, Arikaree, and Ogallala Aquifers are present. They are hydraulically connected and are often considered as one unit referred to as the High Plains Aquifer. The High Plains Aquifer is comprised of several geologic units underlying portions of eight states from South Dakota to Texas. In Todd County, the Ogallala Aquifer is an alluvial aquifer underlain by the Arikaree and White River Aquifers. It is overlain by unconsolidated deposits of wind-blown sand and alluvium. The Ogallala Aquifer underlies an estimated 950 square miles in Todd County with 17 million acre-feet of water in storage. The average thickness of the Ogallala Aquifer in Todd County is 137 feet.

The water rights program maintains 73 observation wells completed to the Ogallala Aquifer with 22 of these wells located in Todd County. These wells are monitored monthly and water levels have been plotted over time.

There are nine water rights within a two-mile radius of 2624-2 appropriating a total of 30.98 cfs of water from the Ogallala Aquifer.

Mr. Costello concluded that the Ogallala Aquifer is an unconfined alluvial aquifer in Todd County South Dakota. Unappropriated water is available in the Ogallala Aquifer. Developing the diversion requested will not have an adverse impact on existing water rights or domestic wells. The well constructed under this permit shall be constructed by a licensed well driller and shall comply with all applicable well construction standards.

The chief engineer recommended approval of Application No. 2624-2, Edward Hill, with the Well Interference Qualification, Well Construction Rule Qualification No. 2, and the irrigation water use Questionnaire Qualification.

Responding to questions from Ms. Best, Mr. Costello explained DENR Exhibit 3, the hydrograph for Observation Well TD-76F, DENR Exhibit 4, the hydrograph for Observation Well TD-90A, and DENR Exhibit 5, the hydrograph for Observation Well TD-76G. Mr. Costello also discussed DENR Exhibit 7, Rosebud Sioux Tribe: Depth to water levels in Tribal Monitor wells 1984-2006 and aerial photo.

Responding to questions from Michael Valandra, Mr. Costello stated that he has met Syed Huq only once. Mr. Costello said he is not familiar with the Rosebud Sioux Tribe's sovereign jurisdiction. Mr. Costello has never gone to the Rosebud Reservation to meet with Syed Huq.

Mr. Best stated that Mr. Costello is testifying regarding his review of the application for purposes of ground water analysis, monitoring wells, etc. He did not testify regarding jurisdictional matters.

Responding to questions from Ms. Best, Mr. Costello stated that in reviewing the application he relied on the hydrographs, the department's monitoring well data, existing water rights, studies conducted in the area, and other information the department has on file.

Responding to questions from Mr. Kills in Sight, Mr. Costello stated that he has had no communication with the Bureau of Indian Affairs or the Department of Interior regarding this application.

Mr. Kills in Sight said in reference to the deeded property of non-citizen Indians on reservations, there are specific ramifications to the Winters Doctrine that need to be honored. He said there needs to be a policy regarding Indian relationships in reference to water in the future.

Edward Hill was administered the oath by Chairman Hutmacher and testified regarding the application. He pointed out on the map the location of his proposed well.

Responding to questions from Mr. Valandra, Mr. Hill stated that he did not ask the St. Francis community, the Rosebud Sioux Tribal Council, the Bureau of Indian Affairs, The Mni Wiconi water system or Syed Huq for approval of the water permit.

In response to questions from Mr. Brink, Mr. Hill stated that his other water permits are on deeded land. He went to the state for approval of this water permit application because the state has permitting authority.

Ruben McCloskey was administered the oath by Chairman Hutmacher. He asked who authorized the state to grant water permits. He said the state had to get authorization for someone such as the tribe or the Bureau of Indian Affairs. He said the communication gap between the state and the tribes has to be closed and both entities need to work together. Mr. McCloskey said there is so much mistrust and it goes way back in time to when the treaty was signed – the state has taken the Black Hills away from the Indians, taken their land away, and

now the water. Mr. McCloskey asked the he be provided with written documentation that the state is authorized to issue water permits on the reservation.

Mr. Brink asked if Mr. McCloskey knows of a specific water permit that the Water Management Board has issued on reservations lands.

Mr. McCloskey said he knows of several water permits on reservation land that have been approved by the state. For example, Mr. Hill did not go to the tribe, the BIA, or the tribal water resources person, Mr. Huq, but still the state is recommending the board approve his water permit.

Mr. Brink said the proposed water permit will be on deeded land. Mr. McCloskey said an Indian can sell his land but he cannot sell the mineral rights.

Darrell Marcus Kills in Sight was administered the oath by Chairman Hutmacher. He testified that the conclusions in Mr. Costello's report on Mr. Hill's application are not the same as the conclusions for Mr. Mulligan's application a few months ago.

Mr. Kills in Sight stated that Winter's Doctrine of 1908 says the Rosebud Sioux Tribe has the first rights to the water. In 1953 South Dakota somehow started issuing water permits on non-Indian lands. Mr. Kills in Sight said there is no written documentation or justification indicating who authorized the state to issue water permits on Indian land. He requested a copy of the document that authorizes the board to issue permits on tribal land.

Michael J. Valandra. Sr. was administered the oath by Chairman Hutmacher and testified that he is appearing as a representative of the Rosebud Sioux Tribe. Mr. Valandra stated that the tribe is opposed to this water permit application because the land is Mr. Hill's property but the mineral rights do not belong to Mr. Hill.

Mr. Valandra asked that the State of South Dakota make an effort to have better communications with the Rosebud Sioux Tribe in the future. Mr. Valandra said he is very disappointed that DENR staff did not contact Syed Huq, the tribal council, or the St. Francis community regarding this application.

Mr. Bjork said he is concerned because the department sent all of the water permit application information to Syed Huq and Rodney Bordeaux and Mr. Huq and Mr. Bordeaux made the decision not to share the information with other tribal council members.

Mr. Valandra stated that the department should have sent a letter to all 20 members of the tribal council, not just to Mr. Bordeaux and Mr. Huq.

Ms. Best said information on new applications is available on the department's website.

Mr. Valandra answered questions from Ms. Best regarding the St. Francis community and the town of St. Francis.

In response to questions from Ms. Best, Mr. McClouskey stated that he does not object to the board issuing a water permit to Mr. Hill. He simply wants to know who gave the State of South Dakota permission to issue water permits on the reservation.

Responding to questions from Ms. Best, Mr. Kills in Sight stated that he objects to approval of the proposed well in Water Permit Application No. 2624-2.

Jim Goodman testified that after the March Water Management Board meeting he met with Syed Huq and they discussed communication between the department and the tribe. At that meeting, Mr. Goodman and Mr. Huq agreed that when the department receives an application from someone within the reservation boundaries, the department will send the notification to Mr. Huq for comments. Mr. Goodman stated that in 1907 the State of South Dakota got into the permitting process. At that time it was strictly surface water. In 1955, the State of South Dakota made ground water permitting part of the same system. Mr. Goodman said the State claims all water within the boundaries of the State of South Dakota, and therefore, requires citizens who want to use the water to file an application for a water right.

Mr. Goodman stated that there are a number of court cases that verify that the State of South Dakota can issue water permits. The question becomes a jurisdictional issue over what is tribal land and what is deeded land. Since the state claims the water within the State of South Dakota the state is claiming the right to issue permits on deeded land.

Mr. Goodman said there is a finite amount of water in these formations and an estimated amount of water that recharges these formations. State law states that these aquifers cannot be mined. The Ogallala is a surficial aquifer and recharge occurs over the entire area of the aquifer. DENR's job is to attempt to quantify that amount of water and not issue permits that will exceed that amount.

Mr. Goodman stated that in 1976 the department received permission from the tribal council to drill the observation wells on the Rosebud reservation.

Ms. Best asked Mr. Goodman to explain what unconfined aquifer means. Mr. Goodman stated that unconfined as used by DENR is strictly a description of an aquifer. Unconfined means that there are no soils or rock above the aquifer that form a seal that is good enough to prevent water from moving down. If an aquifer is unconfined, it is also under water table conditions.

Ms. Best offered DENR Exhibit 10, a map. The exhibit was admitted into the record.

Ms. Best, Mr. Hill, Mr. Valandra, and Mr. Kills in Sight provided closing statements.

Chairman Hutmacher requested board action.

Motion by Freeman, seconded by Loucks, to approve Water Permit Application No. 2624-2, Edward Hill, subject to the qualifications set forth by the chief engineer.

Discussion took place and the motion carried.

Ms. Best will prepare the Findings of Fact, Conclusions of Law and Final Decision.

OTHER ITEMS OF BUSINESS: Mr. Holzbauer expressed concern that the board members are only being reimbursed 0.37 per mile to drive to Pierre for the board meetings.

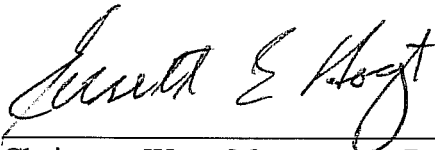
Mr. Hallem said there will be a discussion about raising the mileage reimbursement at the next Board of Finance meeting.

ADJOURN: Chairman Hutmacher adjourned the meeting.

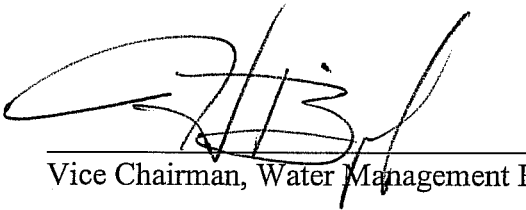
A court reporter was present for this meeting and a transcript of the proceedings may be obtained by contacting Capital Reporting, PO Box 903, Pierre, SD 57501; telephone number 605-224-7611.

The meeting was digitally recorded and a copy of the recording may be obtained by contacting the Department of Environment and Natural Resources, 523 East Capitol Avenue, Pierre, SD 57501; telephone number 605-773-3886.

Approved this 2nd day of July, 2008.



Chairman, Water Management Board



Vice Chairman, Water Management Board

WATER MANAGEMENT BOARD MEETING

May 7, 2008

Qualifications:
wi - well interference
wcr - well construction rules
iq - irrigation questionnaire
lf - low flow

Unopposed New Water Permit Applications Issued Based on the Chief Engineer Recommendations

No.	Name	Address	County	Amount	Use	Source	Qualifications
1895-1	Perkins County RWS	Bison	PK	0.222 cfs	rural water	1 well-Fox Hills Formation	wi, wcr, 1 special
2626-2	IRAM	Hot Springs	FR	1.85 cfs	139 acres	1 well-Inyan Kara Formation	wi, wcr, iq
2627-2	Daniel O'Neill	Tuthill	BT	0.33 cfs	144 acres	1 well-Ogallala Aquifer	wi, iq
6326A-3	Hartman & Pahl Farms	Pierre	SU	no add'l	264 acres	Missouri River	iq
6871-3	Platte Colony	Platte	CM	7.29 cfs	510 acres	44 acre-foot storage dam	lf, iq, 1 special
6918-3	Karl Schenk	Mission Hill	YA	1.33 cfs	55 acres	1 well-Lower James:Missouri	wi, wcr, iq, 1 special
6933-3	Steve Andrews	Beresford	UN	2.22 cfs	249.1 acres	1 well-Brule Creek Aquifer	wi, wcr, iq, 1 special
6943-3	Jerome & Dorothy Sylliaasen	Mission Hill	YA	1.56 cfs	123 acres	1 well-Missouri:Elk Point	wi, wcr, iq
6944-3	Jerome & Dorothy Sylliaasen	Mission Hill	YA	1.56 cfs	68 acres	1 well-Missouri:Elk Point	wi, wcr, iq, 1 special
6945-3	Jerome & Dorothy Sylliaasen	Mission Hill	YA	1.56 cfs	68 acres	1 well-Missouri:Elk Point	wi, wcr, iq, 1 special
6947-3	Joel Adler	Milbank	GT	1.71 cfs	no add'l acres	1 well-Veblen Aquifer	wi, wcr, iq, 1 special
6848-3	Brian Mount	Meckling	CL	1.67 cfs	104 acres	1 well-Lower James:Missouri	wi, wcr, iq, 1 special
6949-3	Todd Cowan	Highmore	HY	3.56 cfs	270 acres	4 wells-Highmore:Blunt	wi, wcr, iq
6950-3	Todd Cowan	Highmore	HY	3.56 cfs	260 acres	4 wells-Highmore:Blunt	wi, wcr, iq
6951-3	Verlyn Hybertson	Sioux Falls	CL	2.14 cfs	150 acres	1 well-Lower James:Vermillion	wi, wcr, iq
6952-3	Brian Herrboldt	Menno	HT	1.78 cfs	90 acres	1 well-Lower James:Vermillion	wi, iq
6953-3	Aberdeen Energy LLC	Mina	ED	1.67 cfs	industrial	1 well-Inyan Kara Formation	wi, 2 special
6954-3	Jerome Poeschl	Yankton	CL	0.98 cfs	30 acres	1 well-Missouri:Elk Point	wi, iq, 1 special
6955-3	Dean Johnson Living Trust	Logansport IN	CL	1.56 cfs	128 acres	1 well-Missouri:Elk Point	wi, wcr, iq
6956-3	Joseph W Trudeau	Jefferson	UN	2.0 cfs	180 acres	1 well-Missouri:Elk Point	wi, iq
6957-3	Hoffman Harvesting	Bowdle	WL	5.67 cfs	461 acres	9 wells-Bowdle:Edmunds	wi, wcr, iq
6960-3	Jepsen Farms	Gayville	YA	2.0 cfs	260 acres	1 well-Missouri:Elk Point	wi, wcr, iq
6964-3	Franklin F Orr	Volin	CL	1.78 cfs	260 acres	1 well-Lower James:Missouri	wi, wcr, iq
6965-3	Kevin Tevedhal	Wessington	JE	44 AF	fwp, livestock	runoff	1 special, lf
6966-3	Troy Walraven	Meckling	CL	1.78 cfs	133 acres	1 well-Missouri:Elk Point	wi, wcr, iq
6967-3	Erickson Bye Farms	Gayville	YA	2.0 cfs	277 acres	1 well-Missouri:Elk Point	wi, wcr, iq
6968-3	Roger Blake	Centerville	TU	1.78 cfs	160 acres	1 well-Lower James:Missouri	wi, wcr, iq
6969-3	Roger Blake	Centerville	TU	1.78 cfs	77 acres	1 well-Parker:Centerville	wi, wcr, iq
6970-3	Roger Blake	Centerville	TU	1.78 cfs	236 acres	1 well-Upper Vermillion:Missouri	wi, wcr, iq
6971-3	Brian Baum	Alpena	BD	1.56 cfs	230 acres	1 well-Warren:West James	wi, iq, 1 special
6972-3	Brian Baum	Alpena	BD	1.56 cfs	128 acres	1 well-Warren:West James	wi, iq, 1 special

No.	Name	Address	County	Amount	Use	Source	Qualifications
6973-3	Jamesville Colony	Utica	YA	0.167 cfs	commercial	1 well-Dakota Aquifer	wi, wcr, 3 special
6974-3	Ordal Gustad	Volin	YA	1.56 cfs	140 acres	1 well-Lower James:Missouri	wi, wcr, iq
6975-3	Melvin & Larry Donnelly	Elk Point	UN	1.78 cfs	124 acres	1 well-Missouri:Elk Point	wi, iq
6976-3	David Diedrich	Elkton	BG	1.33 cfs	120 acres	1 well-Big Sioux:Aurora	wi, wcr, iq
6977-3	Jim Allen Lake	Gettysburg	PT	1.33 cfs	30 acres	Little Cheyenne Creek	wi, iq
6978-3	Marquardt Farms	Yankton	CL	1.78 cfs	133.5 acres	1 well-Missouri:Elk Point	wi, wcr, iq
6979-3	Marquardt Farms	Yankton	CL	1.78 cfs	138 acres	1 well-Missouri:Elk Point	wi, wcr, iq
6980-3	Marquardt Farms	Yankton	CL	2.22 cfs	271.5 acres	1 well-Lesterville Aquifer	wi, wcr, iq
6981-3	Ronald E Jongeling	Castlewood	HM	1.78 cfs	120 acres	1 well-Big Sioux:Brookings	wi, wcr, iq
6982-3	James Barger	Volin	YA	1.78 cfs	130 acres	1 well-Lower James:Miss Scotland	wi, wcr, iq
6983-3	James Barger	Volin	YA	1.78 cfs	130 acres	1 well-Lower James:Miss Scotland	wi, wcr, iq
6984-3	Dorothy M Schnose	Davis	TU	2.22 cfs	162 acres	1 well-Upper Vermillion:Miss	wi, wcr, iq
6985-3	Nels J Sorensen	Vermillion	CL	1.78 cfs	136 acres	1 well-Lower James:Missouri	wi, iq
6986-3	LaVerne Mennenga	Castlewood	HM	3.56 cfs	225 acres	1 well-Big Sioux:Brookings	wi, wcr, iq, 1 special
6997-3	Gray Goose Irrigation Dist.	Pierre	HU	8.34 cfs	680 acres	Missouri River	iq

ATTENDANCE SHEET
WATER MANAGEMENT BOARD
May 7, 2008

NAME (PLEASE PRINT)

MAILING ADDRESS

CITY & STATE, Zip

ITEM OF
INTEREST

Ted Schultz
Tom Hansen (Senator)

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6418 13th St. S.W.

Rapid City, SD 57709
Huron

9:00 AM
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Reg. Over 151917

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Julie Yager

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BURKE SD
Burke SD

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Margo Lorthrup
Allen Hiebo
Debbie Hiebo

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ST. Francis SD
Mission, S.D
Rosalia

2624-2
2624-2

Killo in Sight

2625-2
Cpt/SB
6959-3
Schneider, Ann